

FAHEY ET AL.
"Mobile Wireless Communication Handset With
Sound Mixer And Methods Therefor"
Atty. Docket No. CS90041

Appl. No. 09/972,381
Confirm No. 5141
Examiner A. Flanders
Art Unit 2644

REMARKS

Request for Reconsideration, Informal Matters, Claims Pending

The final Office Action mailed on 19 September 2005 has been considered carefully. Reconsideration of the claimed invention in view of the amendments above and the discussion below is respectfully requested.

Claim 10 was amended to provide more proper antecedent basis for the "audio mix data reference file". No new issues are raised. The amendment should be entered because it places the application in condition for allowance or in better form for consideration on appeal.

Claims 1-37 are pending.

Allowability of Claims Over Rigopulos & Hruska

Rejection Summary

Claims 1-29 and 34-36 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,763,804 (Rigopulos) in view of U.S. Publication No. 2001/017415 (Hruska). Office Action, 10 June 2005, para. 3.

Allowability of Claim 1

Contrary to the Examiner's assertion, Rigopulos does not enter first and second reference data for first and second soundtracks into an "... audio mix data reference file...." Rigopulos discloses a music synthesizer on a PC wherein a user creates music by operating a joystick or other input device.

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At col. 8, lines 35-58, Rigopulos discloses selecting a background track that is played while operating the joystick. After selecting the background track, the user in Rigopulos selects an instrument. Rigopulos, col. 8, line 65 - col. 9, line 12. In Rigopulos, does not enter reference data from the selected background track into a reference file. At col. 9, lines 25-32, Rigopolus selects skill level, interface type (joystick, game pad etc.), instrument type, background track and musical style and stores this configuration data/variables in memory.

Rigopulos also fails to disclose "...storing the audio mix data reference file having the first and second reference data on the handheld mobile wireless communication device separately from the soundtrack data set file." In Rigopulos, the background track is either loaded into memory for play or streamed from a hard drive.

The Examiner relies on Hruska for teaching a handheld mobile device having an audio mixer, but Hruska fails to disclose or suggest the deficiencies of Rogopulos. Moreover, neither Hruska nor Rigopolus suggest the claimed combination in a "handheld mobile wireless communication device" and the Examienr has stated no rationale for the putative combination. Claim 1 is thus patentably distinguished over Rigopulos and Hruska.

Allowability of Claim 10

Contrary to the Examiner's assertion, Rigopolus does not disclose playing soundtracks referenced in a common (by virtue of the antecedent basis) "audio mix reference file". Rigoplous discloses generating music using a joystick or other input device in which the user can control the notes played and pitch of a selected instrument with an accompaniment (background track).

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Rigoplous does not disclose an audio mix audio file devoid of soundtrack data. The Examiner relies on Hruska for teaching a handheld mobile device having an audio mixer, but Hruska also fails to disclose or suggest the limitations discussed above. Claim 10 is thus patentably distinguished over the art.

Allowability of Claim 11

Regarding Claim 11, Rigopolus and Hruska fail to disclose or suggest in combination with Claim 10

... playing the first and second soundtracks at times specified by the audio mix data reference file.

At col. 7, lines 50-51 (referenced by the Examiner), Rigopolus discloses playing the melody upon depressing a button on the joystick, not based on times specified by a reference file. Claim 11 is thus further patentably distinguished over the art.

Allowability of Claim 14

Contrary to the Examiner's assertion, Rigopolus does not disclose or suggest an "audio mix data reference file" and thus there is no reason for Rigopolus to suggest "integrating the audio mix data reference file and the soundtrack data set file into a common audio format file". None of the passages of Rigopolus referenced by the Examiner disclose or suggest generating an "audio mix data reference file". The Examiner relies on Hruska for teaching a handheld mobile device having an audio mixer, but Hruska also

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fails to disclose or suggest the limitations discussed above. Thus neither reference suggests the further act of "...uploading the common audio format file from the handheld mobile wireless communication device." Claim 14 is thus further patentably distinguished over the art.

Allowability of Claim 18

Regarding Claim 18, contrary to the Examiner's assertion, Rigopulos and Hruska fail to disclose or suggest "...playing the first soundtrack upon selecting the first soundtrack..." and "... playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack." In Rigolopus, the background track is selected in the setup stage (col. 8, lines 43-59) but not played until the joystick START button is depressed (col. 9, lines 33-39). After the setup is complete, the user selects an instrument. Col. 8, lines 66-67. In Rigopolus, however, music is not created using the instrument until the user depresses the PLAY button on the joystick. Thus Rigopolus does not play the second soundtrack upon selecting the second soundtrack. The Examiner relies on Hruska for teaching a handheld mobile device having an audio mixer, but Hruska also fails to disclose or suggest the limitations discussed above. Claim 18 is thus patentably distinguished over the art.

Allowability of Claim 34

Regarding Claim 34, contrary to the Examiner's assertion, Rigopulos and Hruska fail to disclose or suggest a method for creating a

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polyphonic audio mix on a handheld mobile wireless communication device, comprising "... selecting a first soundtrack having a first time interval", "selecting a second soundtrack having a second time interval, the second time interval different than the first time interval" and "mixing the first and second soundtracks." Rigopolus controls the time interval when mixing, i.e., by depressing the PLAY button while the accompaniment (background track) is playing. The background track in Rigopolus has no time interval associated therewith. The user controls the playing of the background track by depressing the START button. The time interval of the instrument depends on how long the user depresses the PLAY button. Thus the first and second soundtracks of Rigopolus do not have associated different time intervals. The Examiner relies on Hruska for teaching a handheld mobile device having an audio mixer, but Hruska also fails to disclose or suggest the limitations discussed above. Claim 34 is thus patentably distinguished over the art.

Allowability of Claims Over Rigopulos, Hruska & Furukawa

Rejection Summary

Claims 30-33 and 37 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,763,804 (Rigopulos) in view of U.S. Publication No. 2001/017415 (Hruska) and U.S. Patent No. 5,804,755 (Furukawa). Office Action, 10 June 2005, pg. 20.

Allowability of Claim 30

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Regarding Claim 30, contrary to the Examiner's assertion, Rigopolus, Hruska and Furukawa fail to disclose or suggest a method for creating a polyphonic audio mix on a handheld mobile wireless communication device comprising "... selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack", and "playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic."

Rigopolus does not play either the background track or the instrument track upon selection. In Rigopolus, the background track is selected in the setup stage (col. 8, lines 43-59) but not played until the joystick START button is depressed (col. 9, lines 33-39). After the setup is complete, the user selects an instrument. Col. 8, lines 66-67. In Rigopolus, however, music is not created using the instrument until the user depresses the PLAY button on the joystick. The Examiner relies on Hruska for teaching a handheld mobile device having an audio mixer, but Hruska also fails to disclose or suggest the limitations discussed above.

The Examiner's assertion that it would have been obvious to add features of Furukawa to Rigopolus "... to create a more unique playback track" is not supported by the art. Rigopolus discloses a device that enables users to play a selected instrument, using an input device, in the presence of a background track. There is no disclosure or suggestion in Rigopolus to create polyphonic playback tracks. Rigopolus selects a background track and then selects an instrument track that is played using the input device. Rigopolus is unconcerned with creating polyphonic playback tracks. Claim 30 is thus patentably distinguished over the art.

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Allowability of Claim 37

Regarding Claim 37, contrary to the Examiner's assertion, Rigopulos, Hruska and Furukawa fail to disclose or suggest a method for creating a polyphonic audio mix on a handheld mobile wireless communication device, comprising "... selecting one of a second soundtrack and an audio characteristic of the first soundtrack while playing first soundtrack", "... playing the second soundtrack with the first sound upon selecting the second soundtrack without further input by user" if the second soundtrack is selected, or "...playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack without further input by user" if the audio characteristic is selected.

Rigolopus does not play either the background track or the instrument track upon selection. In Rigolopus, the background track is selected in the setup stage (col. 8, lines 43-59) but not played until the joystick START button is depressed (col. 9, lines 33-39). After the setup is complete, the user selects an instrument. Col. 8, lines 66-67. In Rigopolus, however, music is not created using the instrument until the user depresses the PLAY button on the joystick. Thus, in Rigopolus, further input (i.e., depression of START and/or PLAY) is required after selecting the background track and/or the instrument track. The Examiner relies on Hruska for teaching a handheld mobile device having an audio mixer, but Hruska also fails to disclose or suggest the limitations discussed above. Claim 37 is thus patentably distinguished over the art.

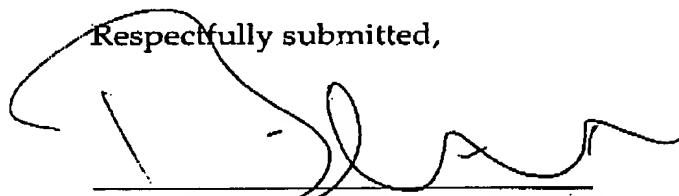
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Prayer For Relief

In view of any amendments and the discussion above, the Claims of the present application are in condition for allowance. Kindly withdraw any rejections and objections and allow this application to issue as a United States Patent without further delay.

Respectfully submitted,



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